

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

UNION PACIFIC RAILROAD COMPANY,
1400 Douglas Street, Stop 1660
Omaha, Nebraska 68179

Plaintiff,

Case No.: 11-CV-23

v.

CITY OF ADAMS,
101 North Main Street
Adams, Wisconsin 53910-1009

and

COMMON COUNCIL OF THE CITY OF ADAMS,
101 North Main Street
Adams, Wisconsin 53910-1009

Defendants.

COMPLAINT

NOW COMES the Plaintiff, Union Pacific Railroad Company, by and through its attorneys, Borgelt, Powell, Peterson & Frauen, S.C., by Attorney Brian D. Baird and Attorney Patryk Silver, and as its Complaint against the Defendants, alleges as follows:

JURISDICTION & VENUE

1. This action arises under the Fifth and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction pursuant to Title 28 of the United States Code, section 1331. This Court also has supplemental jurisdiction over Union Pacific Railroad Company's state law claims pursuant to Title 28, United States Code, section 1367(a).

2. The Western District of Wisconsin is the proper federal venue for this action because the Defendants reside in this judicial district and because it is the judicial district where the constitutional violations are alleged to have been committed pursuant to Title 28 of the United States Code, section 1931(b).

PARTIES

3. The Plaintiff, Union Pacific Railroad Company (hereinafter “Union Pacific”), is a foreign corporation organized and existing under the laws of Delaware, with its principal place of business located at 1400 Douglas Street, Stop 1660, Omaha, Nebraska 68179. Union Pacific owns certain real property located at 1003 W. Commerce Street, Adams, Wisconsin 53910, where it conducts substantial business operations, particularly railroad transportation operations.

4. The Defendant, City of Adams (hereinafter referred to collectively with the other Defendant, the Common Council of the City of Adams, as “the City”), is a Wisconsin municipality with its offices at 101 North Main Street, Adams, Wisconsin 53910-1009.

5. The Defendant, Common Council of the City of Adams (hereinafter referred to collectively with the other Defendant, the City of Adams, as “the City”), is an agency within the City of Adams, which is a Wisconsin municipality, with its offices at 101 North Main Street, Adams, Wisconsin 53910-1009.

BASIC FACTUAL ALLEGATIONS

6. Union Pacific owns real property located at 1003 W. Commerce Street, Adams, Wisconsin 53910. On this real property, Union Pacific owns and operates a railyard where it primarily engages in the business of transporting goods.

7. Prior to March 15, 2010, Union Pacific’s railyard was accessible to the east via West Center Street and West Commerce Street in the City of Adams, Wisconsin.

8. Prior to and after March 15, 2010, Union Pacific contracted with numerous other businesses, including, but not limited to, Gerke Construction, LLC, for the purpose of transporting goods on behalf of these businesses.

9. Prior to March 15, 2010, some of the businesses with which Union Pacific had contractual relationships, including Gerke Construction, LLC, drove heavy vehicles that carried goods to Union Pacific's railyard via West Center Street and West Commerce Street in the City of Adams, Wisconsin.

10. Prior to March 15, 2010, Union Pacific's profits as the result of its contractual relationships with numerous contractors, including Gerke Construction, LLC, were substantial.

11. On March 15, 2010, the Common Council of the City of Adams amended Title X, Chapter 1, Section 13 of the Code of Ordinances of the City of Adams, Wisconsin ("Heavy Traffic Routes Designated").

12. The amendment to Section 10-1-13 changed the text of the ordinance by deleting "Commerce Street East from the Chicago and Northwestern Railroad yards" as a Heavy Traffic Route, and replacing this text with "Commerce Street East from Juneau" as a heavy traffic route.

13. The amendment to Section 10-1-13 prohibits numerous contractors, including Gerke Construction, LLC, from delivering their loads of goods to the Union Pacific rail yard via West Commerce Street.

14. Upon passage of the amendment to Section 10-1-13, any vehicle can travel down the entirety of Commerce Street as a heavy traffic route until that vehicle arrives one block short of Union Pacific's railyard. Then, and only then, does Commerce Street lose its status as a heavy traffic route.

15. Union Pacific was the sole entity and/or person whose business was significantly impacted by the amendment to Section 10-1-13.

16. At no time on or before March 15, 2010 was Union Pacific provided notice that the Common Council of the City of Adams proposed to amend Title X, Chapter 1, Section 13 of the Code of Ordinances of the City of Adams, Wisconsin (“Heavy Traffic Routes Designated”).

17. The City knew, or should have known, that Union Pacific would be the sole entity and/or person whose business would be significantly impacted by the amendment to Section 10-1-13.

18. The amendment to Section 10-1-13 was specifically targeted at interfering with Union Pacific’s contractual relationships with other businesses, particularly Union Pacific’s contractual relationship with Gerke Construction, LLC.

19. The amendment to Section 10-1-13 was not in the public’s interest, and was arbitrary and irrational.

20. As a result of the amendment to Section 10-1-13, numerous contractors, including Gerke Construction, LLC, are no longer able to deliver their loads of goods to the Union Pacific rail yard via West Commerce Street.

21. As a result of the amendment to Section 10-1-13, Union Pacific has incurred and/or will imminently incur significant costs to create a suitable alternative roadway and to maintain a suitable alternative roadway.

22. As a result of the amendment to Section 10-1-13, Union Pacific has and/or will imminently suffer a substantial loss of profits, and Union Pacific has and/or will suffer additional damages, including, but not limited to, the cost to construct and maintain an alternate delivery

route, the loss of the full fair market value of the railyard, and profits under various contracts and prospective contracts.

REGULATORY TAKING— 5TH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND ARTICLE I,
SECTION 13 OF THE WISCONSIN CONSTITUTION

23. Union Pacific repeats and realleges each of the foregoing paragraphs of this Complaint as if set forth in full.

24. The foregoing actions of the City, by and through the Common Council of the City of Adams, violated Union Pacific's rights under the Fifth Amendment to the United States Constitution (Takings Clause) and under Article I, Section 13 of the Wisconsin Constitution.

25. The foregoing actions of the City, by and through the Common Council of the City of Adams in violation of Union Pacific's constitutional rights, resulted in damages to Union Pacific, including the cost to construct and maintain an alternate delivery route, the loss of the full fair market value of the railyard, and profits under various contracts and prospective contracts.

26. The foregoing actions of the City, by and through the Common Council of the City of Adams, were carried out maliciously or with reckless disregard of Union Pacific's rights, thereby entitling Union Pacific to recover compensatory and punitive damages from the City.

PROCEDURAL DUE PROCESS— 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND
ARTICLE I, SECTION 1 OF THE WISCONSIN CONSTITUTION

27. Union Pacific repeats and realleges each of the foregoing paragraphs of this Complaint as if set forth in full.

28. The foregoing actions of the City, by and through the Common Council of the City of Adams, violated Union Pacific's procedural due process rights under the Fourteenth

Amendment to the United States Constitution (Due Process Clause) and under Article I, Section 1 of the Wisconsin Constitution.

29. The foregoing actions of the City, by and through the Common Council of the City of Adams in violation of Union Pacific's constitutional right, resulted in damages to Union Pacific, including the cost to construct and maintain an alternate delivery route, the loss of the full fair market value of the railyard, and profits under various contracts and prospective contracts.

30. The foregoing actions of the City, by and through the Common Council of the City of Adams, were carried out maliciously or with reckless disregard of Union Pacific's rights, thereby entitling Union Pacific to recover compensatory and punitive damages from the City.

EQUAL PROTECTION— 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND ARTICLE I,
SECTION 1 OF THE WISCONSIN CONSTITUTION

31. Union Pacific repeats and realleges each of the foregoing paragraphs of this Complaint as if set forth in full.

32. The foregoing actions of the City, by and through the Common Council of the City of Adams, violated Union Pacific's equal protection rights under the Fourteenth Amendment to the United States Constitution (Equal Protection Clause) and under Article I, Section 1 of the Wisconsin Constitution.

33. The foregoing actions of the City, by and through the Common Council of the City of Adams in violation of Union Pacific's constitutional rights, resulted in damages to Union Pacific, including the cost to construct and maintain an alternate delivery route, the loss of the full fair market value of the railyard, and profits under various contracts and prospective contracts.

34. The foregoing actions of the City, by and through the Common Council of the City of Adams, were carried out maliciously or with reckless disregard of Union Pacific's rights, thereby entitling Union Pacific to recover compensatory and punitive damages from the City.

INTERFERENCE WITH CONTRACT

35. Union Pacific repeats and realleges each of the foregoing paragraphs of this Complaint as if set forth in full.

36. Union Pacific had contractual relationships and/or will have contractual relationship with third parties for the transportation of goods to be delivered by the third party at Union Pacific's railyard in Adams, Wisconsin.

37. The foregoing actions of the City, by and through the Common Council of the City of Adams, have interfered with, and/or will interfere with, those contractual relationships.

38. The foregoing actions of the City, by and through the Common Council of the City of Adams, were intentionally directed at interfering with Union Pacific's contractual relationships.

39. As a result of the actions of the City, by and through the Common Council of the City of Adams, which were intentionally directed at interfering with Union Pacific's contractual relationships, Union Pacific has suffered damages, including the cost to construct and maintain an alternate delivery route, the loss of the full fair market value of the railyard, and profits under various contracts and prospective contracts.

40. The foregoing actions of the City, by and through the Common Council of the City of Adams, were not justified or privileged.

WHEREFORE, Union Pacific demands judgment against the Defendants in the following manner:

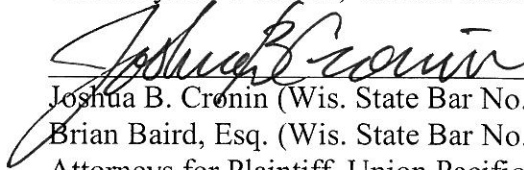
1. Judgment awarding Union Pacific compensatory damages.
2. Judgment awarding Union Pacific punitive damages.
3. Judgment awarding Union Pacific attorney fees and costs.
4. A permanent injunction against the enforcement of Title X, Chapter 1, Section 13 of the Code of Ordinances of the City of Adams, Wisconsin ("Heavy Traffic Routes Designated").
5. Such other relief as the court deems just and equitable.

PLAINTIFF DEMANDS A JURY OF 12 PERSONS.

Dated at Milwaukee, Wisconsin this 11th day of January, 2011.

BORGELT, POWELL, PETERSON & FRAUEN, S.C.

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